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No. 34

In the Supreme Court of the United States

OCTOBER TERM, 1937

WORCESTER COUNTY TRUST COMPANY,
EXECUTOR

PETITIONER,

vs.

RAY L. RILEY, CONTROLLER, ET AL.,

RESPONDENTS

and

HENRY F. LONG, COMMISSIONER,

INTERVENOR

(Former Respondent)

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE PETITIONER

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No. 34

WORCESTER COUNTY TRUST COMPANY, EXECUTOR,
PETITIONER

vs.

RAY L. RILEY, CONTROLLER OF THE STATE OF CALIFORNIA,
W. H. H. GENTRY, INHERITANCE TAX ATTORNEY OF THE STATE OF CALIFORNIA,
FRANK P. SPROUL, INHERITANCE TAX APPRAISER OF THE STATE OF CALIFORNIA,
RESPONDENTS

and

HENRY F. LONG, COMMISSIONER OF CORPORATIONS AND TAXATION OF THE COMMONWEALTH OF MASSACHUSETTS
INTERVENOR
(Former Respondent)

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The majority and dissenting opinions of the Circuit Court of Appeals (R. 43–59) are reported in 89 F. (2d) 59. The opinion of the District Court for the

District of Massachusetts (R. 26–37) is reported in 14 Federal Supplement 754.

JURISDICTION

The final decree of the Circuit Court of Appeals was entered March 15, 1937 (R. 59). The petition for a writ of certiorari was filed April 23, 1937, and was granted May 24, 1937 (R. 61). The jurisdiction of this Court rests upon Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether, where the tax officials of California and Massachusetts each claim that a decedent died domiciled in their state and each claim and threaten to collect state inheritance taxes on a resident basis, the Federal District Court of Massachusetts was given jurisdiction by Section 24 of the Judicial Code as amended January 20, 1936, upon petition by the executor, prior to institution of tax determinative proceedings in the respective state courts, to enjoin such officials from attempting the collection of both taxes until the issue of domicile is decided by that Court.

2. Whether the threatened collection of both such state taxes involves a violation of the Fourteenth Amendment.

3. Whether if such jurisdiction was so given by said statute, the suit is against a state in violation of the Eleventh Amendment.

STATUTE INVOLVED

Section 24 of the Judicial Code, as amended by the Act of January 20, 1936, 49 Stat. 1096, provides in part:

> The district courts shall have original jurisdiction as follows:
>
> *****
>
> Twenty-sixth. —(a) Of suits in equity begun by bills of interpleader or bills in the nature of bills of interpleader duly verified, filed by any person *** being under any obligation written or unwritten to the amount of $500 or more, if—
>
> (i) Two or more adverse claimants, citizens of different States, are claiming to be entitled *** to any one or more of the benefits arising *** by virtue of any such obligation; and
>
> (ii) The complainant *** (b) has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance by the complainant with the future order or decree of the court with respect to the subject matter of the controversy.
>
> *****
>
> (b) Such a suit may be brought in the district court of the district in which one or more of such claimants resides or reside.
>
> (c) Notwithstanding any provision of the Judicial Code to the contrary, said court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them, enjoining them from

instituting or prosecuting any suit or proceeding in any State court or in any United States court on account of such *** obligation until the further order of the court;

*****

The 1936 statute is printed in full at pages 7–9 of the Record, and is reprinted in Appendix A to this brief, *infra*, page 46. It repealed the existing subparagraph (26) also printed in said Appendix A, *infra*, p. 46. We have set forth the present and previous Acts in parallel columns to emphasize the extensive changes made and increased equity jurisdiction granted in the 1936 amendment.

STATEMENT

Robert H. Hunt died on June 11, 1935. By his will the petitioner, formerly called Worcester Bank & Trust Company, was named executor; it duly qualified and was appointed executor by the Worcester County Probate Court on June 26, 1935, the date of the allowance of the will in Massachusetts. The deceased left real estate and bank deposits in California and bank deposits and considerable other intangible property in Massachusetts, the bulk of which is in the custody of the petitioner as executor (R. 3). The executor thereafter procured ancillary probate to be taken out in California (R. 3).

The tax officials of each state are seeking the benefit of the petitioner's fiduciary obligations as executor to settle all inheritance taxes. The Tax

Commissioner of Massachusetts asserts a succession tax due that state based on his claim of domicile in Massachusetts. The tax officials of California assert an inheritance tax due that state based on their claim of domicile in California.

The petitioner as executor, by reason of such conflicting and inconsistent claims, prepared a bill in the nature of interpleader (R. 2) under Section 24 (26) of the Judicial Code, as amended by the Act of January 20, 1936, U. S. C. Title 28, Section 41 (26), called in this brief the "Interpleader Act of 1936." This was filed in the District Court for the District of Massachusetts and an order (by Sweeney, J.) secured (R. 12) restraining the tax officials of both states from taking steps to assess, determine or collect inheritance taxes due from the Hunt Estate. The bill prayed particularly for a determination of the domicile of the decedent in order to ascertain which tax officials are proceeding illegally (R. 6).

The Tax Commissioner of Massachusetts entered his general appearance and answered that Hunt died domiciled in Massachusetts (R. 20). The tax officials of California appeared specially, objecting to the jurisdiction of the District Court, and moved to vacate the restraining order and to dismiss the bill of complaint on the ground that it constituted a suit against a sovereign state and was therefore prohibited by the Eleventh Amendment to the United States Constitution. They did not deny that the California probate court proceedings are ancillary or

of a non-resident estate. The record indicates no claim yet advanced to any California court that Robert H. Hunt died domiciled in that state. The motion to dismiss was denied after hearing and an injunction issued on April 28, 1936 (R. 24). The opinion of the District Court (by Brewster, J.) was entered April 27, 1936, upholding the jurisdiction of that Court (R. 26).

The Tax Commissioner of Massachusetts declined to join in the appeal taken by the tax officials of California to the Circuit Court of Appeals for the First Circuit (R. 39). Prior to argument the California tax officials petitioned this court for a writ of certiorari to review the decision of the District Court. On October 12, 1936, the petition was denied. *Ray L. Riley et al.* v. *Worcester County Trust Co.*, 299 U. S. 567, 57 S. Ct. 29. The case proceeded to argument before the Circuit Court of Appeals which by majority opinion dated March 15, 1937 (by Bingham, C. J., Wilson, J. concurring) reversed the District Court with directions that "The order of the District Court granting a temporary injunction is vacated and the case is remanded to that court with directions to dismiss the bill of complaint for want of jurisdiction" (R. 59). Judge Morton dissented (R. 57). The mandate was stayed (R. 61). On May 24, 1937 certiorari was granted (R. 61), and Henry F. Long, Commissioner of Corporations and Taxation of Massachusetts, originally a respondent, was admitted as a party on his motion to intervene. The respond-

ent Ray L. Riley having in course of these proceedings resigned as Controller of the state of California, petitioner moved in this Court to substitute his successor in that office, Harry B. Riley.

SPECIFICATION OF ERRORS

The court below erred—

1. In construing the allegations of the complaint as treating the respondent tax officials solely as agents of the states rather than as individuals exercising the power of office.

2. In regarding the complaint as an attempt to implead the states of California and Massachusetts as adverse claimants.

3. In ruling that assessment and collection of inheritance taxes by both sets of tax officials acting in accordance with the laws of their respective states, but based on inconsistent findings as to the decedent's domicile, would not deprive the complainant of property without due process of law.

4. In ruling that by denial of certiorari in *Dorrance et al. v. Martin*, 298 U. S. 678, this Court "must also have concluded" that collection of two inheritance taxes based on inconsistent determinations of domicile "was not in violation of the due process and equal protection clauses of the Fourteenth Amendment."

5. In ruling that the respondents, even if regarded as individuals, are required to have adverse claims, one to the other.

6. In ruling that the District Court could not

issue a final decree without affecting the interest of the state of California.

7. In ruling that the proceeding in the District Court was not authorized by the Interpleader Act of January 20, 1936.

8. In ruling that the District Court had no jurisdiction to entertain the complaint.

9. In remanding the case to the District Court with directions to dismiss the bill for want of jurisdiction.

SUMMARY OF ARGUMENT

I.

The Hunt Estate is threatened with multiple inheritance taxation. Robert H. Hunt at the time of his death may have been domiciled in Massachusetts or in California, but not in both. Authoritative Court opinions that only the domiciliary state may tax the transfer by death of intangibles have been to date largely negatived in practice by inconsistent findings of domicile by the respective tax officials or courts of the states concerned. Witness the *Dorrance Estate* litigation. Unless the 1936 Interpleader Act provides a remedy for this admitted wrong, no relief from such paradoxical multiple taxation is available in our courts of justice.

II.

The Interpleader Act of 1936 provides a remedy by which multiple inheritance taxation may be avoided.

The complaint, a bill "in the nature of bills of interpleader," contains all necessary jurisdictional allegations. The petitioner is under obligation to administer the estate and to pay an inheritance tax; the respondent tax officials, citizens of different states, claim to be entitled to one or more of the benefits arising by virtue of that obligation; the petitioner has filed the necessary bond. A decree or decrees permanently enjoining one set of officials and ordering payment to the other will permit the discharge of the petitioner from further liability to the claimants. No injunction of a state court is sought. The Interpleader statute, when liberally construed as such remedial legislation should be, permits the court to grant adequate relief to the petitioner.

III.

So construed, the 1936 Interpleader Act does not violate the Eleventh Amendment. In order to provide some sanction behind the Fourteenth Amendment's guarantees of personal rights from state infringement, there was developed the principle enunciated in *Ex parte Young*, 209 U. S. 123, that the prohibition of the Eleventh Amendment does not extend to suits against an individual exercising the power of office and purporting to act for a state under an invalid statute or under a valid statute in a way not authorized by it. The respondent tax officials of California can be enjoined from collecting their tax based on a California domicile of Hunt, just as in *City Bank Farmers Trust Co.* v. *Schnader*, 291 U.S. 24, the Attor-

ney General of Pennsylvania was enjoined from collecting a tax based on a Pennsylvania situs of certain paintings.

ARGUMENT

I.

THE HUNT ESTATE WAS THREATENED WITH MULTIPLE[1] INHERITANCE TAXATION FOR WHICH PRIOR TO THE 1936 INTERPLEADER ACT THERE WAS NO REMEDY

It appears from the allegations of the Executor's verified bill—which are to be taken as admitted by the motion to dismiss filed by the respondents—that the Executor, a Massachusetts resident, first proceeded in the Court of Massachusetts upon the death of the testator, Robert H. Hunt, to probate the will and obtain its allowance in Massachusetts as that of a Massachusetts resident, and subsequently in the courts of California to procure ancillary administration in California as of an estate of a non-resident (R. 3). It also appears that the Massachusetts Tax Commissioner is determining the domicile in Massachusetts and threatening to assess and collect taxes (R. 3, 4) and that the California tax officials are determining the domicile in California and "are asserting and have threatened and are about to assess

[1]The designation of taxation as "multiple" as employed in this brief, refers to the tax situation arising in those cases where (to adopt the language of this Court) "two or more states have laid the same tax upon the same property interest in intangibles or upon its transfer at death." See *New York ex rel. Cohn* v. *Graves*, 300 U. S. 308, at p. 314.

and attempt to collect" taxes based upon such determination (R. 4). These facts the California respondents admitted by their motion to dismiss. We desire to call particularly to the attention of this Court that there is nothing in the Record to show that any California state court has taken any action whatsoever except on the basis of the non-residence of Robert H. Hunt in California. The claims and actions complained of are those of the respondent tax officials and not of any court.

It is well established that although a man may maintain several residences he can have at one time only one domicile. *Tax Collector of Lowell* v. *Hanchett*, 240 Mass. 557, *Commonwealth* v. *Bogigian*, 265 Mass. 531. Section 11 of the *Restatement of Conflict of Laws* provides "Every person has at all times one domicil, and no person has more than one domicil at a time." It seems clear that Hunt at the time of his death was legally domiciled either in Massachusetts or California, but not in both.

No fundamental principle of taxation is better established today than that intangibles, including stocks, bonds, notes and credits, are subject to the imposition of an inheritance tax only by the domiciliary state.[2] *First National Bank of Boston* v. *Maine*,

[2]We are not here concerned with the questions arising in income taxation as in *New York ex rel. Cohn* v. *Graves*, 300 U. S. 308 and *New York ex rel. Whitney* v. *Graves*, 299 U. S. 366. nor with property or excise taxes as in *Wheeling Steel Corporation* v. *Fox*, 298 U. S. 193, nor with any claims of a "business situs" as in *Beidler* v. *South Carolina Tax Commission*, 282 U. S. 1.

284 U. S. 312; *Farmers Loan & Trust Co.* v. *Minnesota*, 280 U. S. 204. This Court has recently stated that "the objection of double taxation, . . . has been successfully urged in those cases where two or more states have laid the same tax upon the same property interest in intangibles or upon its transfer at death." *New York ex rel. Cohn* v. *Graves*, 300 U.S. 308 at p. 314. The estate of Mr. Hunt consisted of certain real estate in California and the following intangibles, "sizeable bank deposits both in Worcester, Massachusetts, and in Los Angeles, California, and considerable intangible personal property, the bulk of which is in the custody and possession of your complainant in Worcester, Massachusetts." (R. 3). It follows, therefore, that the Hunt Estate, insofar as its intangible assets were concerned, was subject to an inheritance tax payable either to the California tax officials or the Massachusetts Tax Commissioner, but that collection of both taxes would cause irreparable injury and constitute a taking of the estate's property without due process of law. *City Bank Farmers Trust Co.* v. *Schnader*, 291 U. S. 24. Yet both state tax officials were and are claiming such taxes, and as estate assets are within the field of their activities, the executor is placed in the preposterous position of helplessly watching two wholly inconsistent attempts to collect taxes from the assets entrusted to its care and supervision.

Such a wrong would seem incredible, and the legal system permitting it ridiculous, if it were not for the fact that the law reports and popular magazines al-

ready contain the story of the Dorrance Estate litigation, as a result of which both Pennsylvania and New Jersey have actually collected huge inheritance taxes based on inconsistent claims of domicile. *Estate of Dorrance*, 309 Pa. 151; *In re Dorrance*, 115 N. J. Eq. 268; 116 N. J. Eq. 204; *Campbell's Soups* (Nov. 1935) 12 Fortune 69, 136. All efforts to secure relief in the federal courts failed. See *New Jersey* v. *Pennsylvania*, 287 U. S. 580; *Dorrance* v. *Pennsylvania*, 287 U. S. 660; *Hill* v. *Martin*, 296 U. S. 393. Whatever the reflection on American jurisprudence may be, it must be accepted that to date (*if we except the present proceeding*) no way has been found to place before an impartial forum the question of domicile, and thus prevent the possibility of multiple inheritance taxation. The Green Estate litigation is the most publicized of the current attempts to secure a remedy in the federal courts. *State of Texas* v. *State of Florida, et al.*, 300 U. S. 643. See also *Nevin, Ex.* v. *Martin*, Eq. No. 4805 in U. S. D. C. of N. J. where after collection of an inheritance tax by Pennsylvania, injunctive relief is sought against further taxation of the estate by the New Jersey officials. Separate trials in different jurisdictions give no guarantee of similar results. The evidence available in one case may differ from that in the other and it is but natural to find a court tending to support the local tax by finding domicile in its own jurisdiction. As pointed out by Zachariah Chaffee, Jr. in his illuminating article on *The Federal Interpleader Act of 1936* in 45 Yale

Law Journal at 1170, the decision in the first state court is not *res judicata* in the second, and although it is conceivable that each court might find the decedent lived in the other state, thus freeing the estate from both obligations, experience has proved it much more likely that a double tax will result. A single final determination of domicile has been secured only in one case and then only where the conflicting tax authorities agreed on a forum. *Matter of Trowbridge*, 266 N. Y. 283. The great public interest in securing a remedy for executors placed in this illogical position is shown by the importance conceded to the question in the reports of a Committee of the National Tax Association, a group largely made up of Tax Commissioners of the various states. See report reprinted in full in Commerce Clearing House Inheritance, Estate and Gift Tax Service, 6th Edition, Old Volume IV, Page 20609, Paragraph 4377.

The petitioner's effort to solve this distressing problem has received considerable favorable comment in current legal periodicals. See 49 Harvard Law Review 1378; 50 Harvard Law Review 956 at 960, and 1121; 45 Yale Law Journal 1176; 31 Illinois Law Review 546; 85 University of Pennsylvania Law Review 844.

II.

The Federal Interpleader Act of 1936 Provides a Remedy by which Multiple Inheritance Taxation May Be Avoided in a Case of Disputed Domicile Such as is Presented in the Bill of Complaint.

Of paramount importance is the construction of the Act of January 20, 1936, under which this proceeding has been commenced. The extensive 1936 amendments to the Interpleader Act, indicated in the reprint of the Act in Appendix A, *infra*, p. 46, show that it was intended to afford relief in cases outside the scope of the earlier interpleader statute. A mere reading of the Act compels the conclusion that it was drawn in the broadest terms.

The traditional limitations of interpleader were studiously avoided by providing for bills in the nature of interpleader, and by other provisions removing the restrictions surrounding the strict bill of interpleader and permitting general equity relief. It cannot seriously be contended that the statute has application only to the exact situations considered by the Congress that passed it. If, as the District Court and the minority of the Circuit Court of Appeals found, the present bill stated a case within the fair intendment of the Act, the relief afforded by its provisions should be granted. See *Caminetti* v. *United States*, 242 U. S. 470, 490. In construing the statute to grant no relief to the estates of deceased

persons threatened with multiple inheritance taxation, the Court below disregarded the cardinal principle that a construction which causes grave public injury or which renders the statute inefficient should be avoided. See *Bird* v. *United States*, 187 U. S. 118, 124. In *Knowlton* v. *Moore*, 178 U. S. 41 at 77 it was stated by this Court: "We are, therefore, bound to give heed to the rule, that where a particular construction of a statute will occasion great inconvenience or produce inequality and injustice, that view is to be avoided if another and more reasonable interpretation is present in the statute. *Bate Refrigerating Co.* v. *Sulzeberger*, 157 U. S. 1, 37; *Wilson* v. *Rousseau*, 4 How. 646, 680; *Bloomer* v. *McQuewan*, 14 How. 539, 553; *Blake* v. *National Banks*, 23 Wall. 307, 320; *United States* v. *Kirby*, 7 Wall. 482, 486."

A careful study of the statute demonstrates that the bill is well within its scope. See 49 Harvard Law Review 1378 for a note approving the decision in the District Court and stating "The terms of the statute seem to warrant its application to the present vexing problem." The dissenting opinion of Judge Morton states "I agree that the Interpleader Act as amended is broad enough to cover the present case of conflicting claims to an estate tax which can be justly collected by only one of the claimants." (R. 57). As amended, Section 24 of the Judicial Code gives the District Court jurisdiction of suits in equity begun by *bills in the nature of bills of interpleader* by any person having in his possession $500 or more, *or*

being under any obligation written or unwritten to the amount of $500, if (i) two or more adverse claimants, citizens of different states, are claiming to be entitled to such money or property, or if (ii) two or more adverse claimants, citizens of different states, are claiming to be entitled to any *one or more of the benefits arising by virtue of any such obligation,* and in either event the suit may be entertained *although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another.*[3] The bill of complaint contains allegations supplying every one of these jurisdictional requirements. The executor has over $500 in its possession to which citizens of California and Massachusetts have set up adverse claims. The executor is under an obligation to settle all proper inheritance taxes, and the tax officials of each state, adversely to each other, are seeking a benefit arising from that obligation. See Massachusetts General Laws, Chapter 65, Sections 1, 6 and 9, and California Inheritance Tax Act, Sections 1 and 3, both printed in the Appendix, *infra,* pages 54, 57.

It may be contended that the Act should not be applicable to conflicting claims for taxes because such practice would interfere with the prompt collection of revenues. Where a tax is valid, its prompt collection should not be hampered, we grant, but there is cer-

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[3]The jurisdictional requirements which we have italicized appeared for the first time in the broadly worded 1936 Amendment to the Interpleader Act. See Appendix A, *infra,* p. 46.

tainly no public policy against interference with the collection of invalid taxes where no adequate remedy at law is available. The flood of injunctive relief granted all over the country against the collection of the federal processing taxes, later invalidated by the decision in *United States* v. *Butler*, 297 U. S. 1, is too recent to permit one to put much weight in any public policy argument on this point. The recent amendment of Section 24 of the Judicial Code by the Act of August 21, 1937, although not applicable to this case which was pending at the time of its enactment, expressly limits its prohibition against injunctions to stay tax collections to cases "where a plain, speedy and efficient remedy may be had at law or in equity." The respondents in this connection have previously relied on *Welch* v. *Boston*, 208 Mass. 326, where interpleader under state practice was denied to a citizen in danger of double taxation. The 1936 Amendment to the Federal Interpleader Act was passed just to obviate such technical obstacles to relief as proved insurmountable in this Massachusetts case. There the Court pointed out the lack of privity between the claimants, the interest of the stakeholder in the outcome of the suit, and the absence of a particular bit of property in court to which claims were asserted. It appears from the legislative history of the Interpleader Act and the language of the Amendment itself that Congress was seeking to avoid just such barriers to relief.

An important question of construction of the

statute, not dealt with by the Court below, relates to the petitioner's obligation from which there arises the benefit claimed by the California respondents. The petitioner's obligation is that of a testamentary executor to settle all proper inheritance taxes of the estate. The petitioner was named in the testator's will as his executor. Regardless of the ultimate determination of domicile (the will has been proved and allowed in Massachusetts and the executor appointed there) the executor named in the will is obligated to cause the will to be probated and to cause the decedent's property to be administered. This includes the settlement of all proper inheritance taxes in whatever states. As alleged in the petition, the estate is largely in the petitioner's custody. The California and Massachusetts taxes asserted by the several respondents are generated by the devises and legacies in that will, for without it the decedent's property would pass by descent in different proportions than the legacies upon which the various succession taxes are calculated. The tax claims must therefore depend upon the probate of the will in the respective states, and this probate is a duty and obligation of the executor. Even if in one state proceedings are in form ancillary, the testamentary executor is still under the obligations above recited, and the tax officials of that state are seeking, in their tax claims, a benefit arising by virtue of such obligations resting upon the testamentary executor, even if appointed in another state. There are assets in two states. The tax statutes of

each embrace within their definitions all executors and administrators and all personal property wherever situated, and impose tax liens on all assets. See Appendices B and C, *infra*, pp. 54, 57. The bulk of the decendent's assets are now in Massachusetts; the remainder are in California. To enforce the California tax its officials may procure a determination of domicile in California by that state's court, and will procure an assessment of tax measured on that basis of residence. At the same time the testamentary executor will be faced with like proceedings by Massachusetts tax officials in the courts of that Commonwealth with a consequent determination of Massachusetts domicile and a tax on that basis of residence. In this situation the testamentary executor is faced with duties and obligations both in California and Massachusetts by virtue of which benefits arise for the respective tax officials. To add to the executor's obligation, the California respondents, if the California assets prove to be insufficient to satisfy their tax, will doubtless insist that the Massachusetts executor respect their claim, and relying on the decision omitted from their brief in the Court below, *Milwaukee County* v. *M. E. White Company*, 296 U. S. 268, come into the Massachusetts courts to collect their tax judgment. These California respondents in such an event would find support in the language of this Court in that case at p. 276, where it was said "The very purpose of the full faith and credit clause was to alter the status of the several states

as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation throughout which a remedy upon a just obligation might be demanded as of right, irrespective of the state of its origin." This recent decision makes it clear that such a tax judgment in California is entitled under the Constitution to full faith and credit in the Massachusetts state courts. Prior to this decision the New York Court of Appeals in *Colorado* v. *Harbeck*, 232 N. Y. 71, recognized the existence of a liability to pay a Colorado succession tax, but held the tax unenforcible against assets in New York. However, in *People of New York* v. *Coe Mfg. Co.*, 112 N. J. L. 536, a suit on a New York court's judgment for a New York franchise tax was entertained by the New Jersey court. Whether or not respondents could recover in Massachusetts for the California succession tax, the fact remains that the petitioner is obligated to pay a tax and is under a fidiciary obligation to settle the estate and its liabilities and therefore within the protection of the Interpleader Act. The mere existence of the obligations satisfies the jurisdictional requirement.

The Court below questioned whether the District Court could discharge the executor from the obligations acknowledged by the petitioner. (R. 57). The bill of complaint expressly alleges that if the question of domicile is finally determined, there is little likeli-

hood of any controversies between the testamentary executor and the tax officials of either state. See R. 4, 5. The Interpleader Act directs that such a discharge shall be accomplished. And it also provides that the Court shall "enter all such other orders and decrees as may be necessary or convenient to carry out and enforce the same" (R. 8). The executor has given a bond to the District Court conditioned upon its compliance with any future order or decree of the Court "with respect to the subject matter of the controversy" (R. 9, 10). The Federal Court sitting in equity can issue from time to time orders or decrees to require the executor to comply with the statutory requirements of the state of domicile, and with the orders of its court relating to taxes, etc. Until the executor has made such payments and complied with such state court requirements it is not relieved of its obligation, nor discharged of its liability, nor should the Federal Court until that time discharge the executor from its obligations. The Federal Court will not, therefore, have to determine the tax liability to any particular state. The executor will not drop out of the proceedings, until the question of domicile and the executor's obligation has been settled. The District Judge's opinion shows plainly that he believed the proper relief can be granted the complainant. The executor is not now disturbed as to the efficacy of that relief. It is possible, of course, that if the District Court finds the domicile to be in Massachusetts, the California tax authorities may

still seize and confiscate the assets of the estate within their control. In such an event the question of the value of a discharge from the federal court will arise. We submit that, at least on the present record, the presumption should be that, if the federal court directs responsible California tax officials to take no steps toward the determination of any taxes on the Hunt Estate, neither they nor any other newly appointed officers of that state will disregard the order and attempt to collect the taxes. Certainly it is no argument today to say that in the future it may be necessary to enjoin other officers in order to guarantee adequate relief to the executor. Once the present litigation is concluded there will be no controversy and but little delay in adjusting what taxes are due, and closing the estate. See Paragraph 11 of complaint (R. 4). For example, the Court, if it determines domicile in California or Massachusetts, may order the executor to proceed at once to settle the taxes of such state, and the Executor is under bond to comply (R. 9, 10).

The effect of the holding of the Court below was to exempt from the Interpleader Act all state officers. Nothing in the Act suggests that Congress had any such intent. Certainly it would be necessary to use other language in the statute before any reasonable person would construe "two or more adverse claimants, citizens of different States" as excluding citizens who also hold office under their respective state governments. The Court below was so convinced that

these proceedings are brought against the state of California that it used that mistaken conviction as a premise. Were the proceedings against California, it would be necessary to dismiss the bill, either on the ground that it was prohibited by the Eleventh Amendment, or that states are not "citizens" within the meaning of the Interpleader Act. The two grounds are equally inapplicable to the true state of facts in this case. We submit that the question of statutory construction must be decided on the same grounds and in the same way as is the accompanying constitutional question of whether these proceedings do or do not constitute a suit in equity "prosecuted against one of the United States" within the prohibition of the Eleventh Amendment. In final analysis the two questions must be the same. If, as decided by the District Court, under the doctrine of *Ex parte Young*, 209 U. S. 123, approved in later decisions of this Court, this proceeding for relief against the illegal action of these tax officials is not prohibited by the Eleventh Amendment, it should follow that the scope of the Interpleader Act is equally broad and includes this bill against certain named individuals, citizens of California and Massachusetts, who are here alleged to be acting beyond their authority as state officials. If we assume for the moment that the bill of complaint is against the individual citizens mentioned in it, there seems no reason to exempt them from the operation of the Interpleader Act. We seek no strained construction of the Act, but

merely wish to include in the phrase "citizens of different States" all citizens, whether holding state office or not.

It may be suggested that the District Court disregarded the provisions of Section 266 of the Judicial Code in issuing the injunction without calling a three judge court to consider the bill of complaint. A complete answer to this contention is that Section 266 has no application except where there is threatened enforcement of an unconstitutional statute. Here there is no such threat. The Massachusetts and California statutes are valid enough. The complaint is that certain citizens exercising their power of office are mistakenly and illegally abusing that power in a way to deprive the Hunt Estate of its constitutional rights. It is well settled that Section 266 does not require a three judge court where the suit is to enjoin collection of a tax under a statute the constitutionality of which is admitted. *Gully* v. *Interstate Natural Gas Company*, 292 U. S. 16; *Lykins* v. *Chesapeake Railroad Co.* 209 Fed. 573, 126 C. C. A. 395; *Connecting Gas Co.* v. *Imes*, 11F. (2d) 191. The bill nowhere alleges that a statute of either state is unconstitutional and no such claim is made. Section 266 of the Judicial Code is therefore inapplicable. Moreover if a claim of unconstitutionality of a state statute had been advanced, no three judge court would have been necessary for the 1936 Amendment to the Interpleader Act expressly states that

> Notwithstanding any provision of the Judicial Code to the contrary, said court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them **** which process and order of injunction shall be returnable at such time as the said court or a judge thereof shall determine.

Clearly action by a single judge of the District Court, without concurrent action by any judge of the District or Circuit Courts is contemplated by the statute.

However, if Judge Brewster erred in not convening a three judge court, his error could not have been corrected on appeal to the Circuit Court of Appeals, *Stratton* v. *St. Louis Southwestern Ry. Co.*, 282 U. S. 10. Had such an error been made by the District Judge, the Circuit Court of Appeals would have had no jurisdiction of an appeal by the California respondents from such an injunctive order, and the aggrieved party's remedy would be by way of writ of mandamus in this Court. If this Court should be of opinion that Section 266 applied and required a three judge court, the decree below should be reversed with an order that the appeal *from the injunction* be dismissed for want of jurisdiction and the case remanded to the District Court. *Stratton* v. *St. Louis Southwestern Ry. Co.*, 282 U. S. 10.

In any event the Circuit Court of Appeals erred in considering the appeal from the denial by the District Court of the motion to dismiss, as the order of the

District Court denying the motion to dismiss was an interlocutory order, not then appealable, in accordance with the rules of Court and the decisions. Such a denial of the motion to dismiss could not have been made by a three judge court and we submit was properly made by the single judge. See *J. & A. Freiberg Co.* v. *Dawson*, 274 Fed. 420, affirmed 255 U. S. 288; *Brown Drug Co.* v. *U. S.*, 235 Fed. 603.

The Court below refused to view the respondent tax officials as "claimants" within the meaning of the Interpleader Act. They are certainly claiming the right to operate their machinery of tax assessment and collection upon the assets entrusted to the petitioner by the decedent's will. Until the issue of domicile is decided, it cannot be ascertained which officials are acting with authority. Until then when one can substantiate his claim of authority and be replaced as a claimant by the state he now claims to represent, all must be viewed as parties to the suit and "claimants" within the statute. Only thus could the suit in *Ex parte Young*, 209 U. S. 123, be maintained against the Attorney General of Minnesota. He had no personal profit in enforcing the railroad rates there questioned. Nor did Attorney General Schnader have any personal claim to the tax collected in *City Bank Farmers Trust Company* v. *Schnader*, 293 U. S. 112, but that suit was held to be against him as a party rather than against Pennsylvania. Similarly in the instant case the claims are now made by the respondent tax officials and the jurisdiction of the

federal courts is supported by those claims until such time as it may be determined that any claim is authorized and made on behalf of a state.

Nor would there be importance in the contention that one of the respondents (Sproul) is a court officer, if such were the fact. See his duties as set forth in Sections 14 and 16 of the California Inheritance Tax Act printed in Appendix C., *infra* p. 60. The important fact is that all are occupying state office, possessing state power and attempting to use that power. None of these respondents have reported to a state court and none have as yet gone into court. The state court has no duty to seek out revenue or initiate tax proceedings. The record discloses no court action in California and it is apparent that the respondent Sproul has not yet made his report to the court. No injunction has been issued to stay proceedings in the California courts, but we submit that it could be issued as it was in *Dugas* v. *American Surety Co.*, 300 U. S. 414; and *Fidelity & Deposit Company of Maryland* v. *A. S. Reid & Co.*, 16 F. (2d) 502. See also *Eagle, Star & British Dominions* v. *Tadlock*, 14 F. Supp. 933. The same clause in the Interpleader Act which allows the service of the District Court's process outside the judicial district "notwithstanding any provision of the Judicial Code to the contrary" expressly allows orders enjoining the claimants "from instituting or prosecuting any suit or proceeding in any State court or in any United States court." In the court below the appellants

admitted[4] that this clause in the Interpleader Act was intended to refer to Section 265 of the Judicial Code, which is the only bar to injunctive relief against state court proceedings.

In our discussion of the construction of the Interpleader Act, mention must be made of the respondents' suggestion that the statute should be construed so as to avoid serious doubt as to its constitutionality. That principle of construction is well established, and if the District Court had labored under any such serious doubt as did the Circuit Court of Appeals the bill might well have been dismissed. The petitioner's position is, of course, that the doctrine expounded in *Ex Parte Young*, 209 U. S. 123, and similar cases, removes all constitutional doubt as to the right of the complainant to secure relief. The principle of law relied on by the respondents is entirely sound, but inapplicable.

III.

So construed the Interpleader Act does not violate the Eleventh Amendment to the United States Constitution

"Where state officials, purporting to act under state authority, invade rights secured by the Federal Constitution, they are subject to the process of the federal courts in order that the persons injured may have appropriate relief." *Ex parte Young*, 209 U. S.

[4] At page 22 of their brief.

123; *Home Telephone & Telegraph Co.* v. *Los Angeles*, 227 U. S. 278; *Truax* v. *Raich*, 239 U. S. 33; *Cavanaugh* v. *Looney*, 248 U. S. 453; *Terrace* v. *Thompson*, 263 U. S. 197.

This quotation from this Court's opinion in *Sterling* v. *Constantin*, 287 U. S. 378, at 393, expresses briefly the principle of constitutional law on which the decision of the District Court in the instant case was based, and which, we contend, was wholly ignored by the Circuit Court of Appeals. Although the provisions of the Fourteenth Amendment do not apply as between private individuals, any one who is in possession of state power and attempting to use that power to the doing of wrongs which the Amendment forbids may be prevented from so doing by a Federal Court.

The Eleventh Amendment to the Constitution of the United States prohibits the extension of the federal judicial process to any suit against one of the states by citizens of another state. Its ratification in 1793 followed this Court's decision in *Chisholm* v. *Georgia*, 2 Dall. 419, and presumably the Amendment was primarily intended to cover the situation which prompted its enactment, namely, a suit to collect a debt from a state. It was at first narrowly construed. See *Osborn* v. *United States Bank*, 9 Wheat. 738. At a subsequent time this Court reacted toward a literal interpretation. See *In re Ayers*, 123 U. S. 443, and other decisions of that period. The Fourteenth Amendment was ratified in

1868. In 1908 the decision in *Ex parte Young*, 209 U. S. 123, solved what had almost developed into a conflict between the Eleventh and Fourteenth Amendments by giving relief to a person whose rights guaranteed by the Fourteenth Amendment were jeopardized by persons purporting to act as officers of a state, and permitting the federal courts to entertain a suit by the aggrieved person against the individual state officer whose action was immediately endangering the plaintiff's constitutional rights. This relief is due whether the individual officer is following literally the mandate of the state law or proceeding against its express commands. He "invades, in the course of his duties, a private right secured by the federal Constitution." *Iowa-Des Moines National Bank* v. *Bennett*, 284 U. S. 239, at 246. The prerequisite is that the respondent occupy a state office and be in possession of state power which he is attempting to use to the doing of wrongs forbidden by the Fourteenth Amendment. See *Home Telephone & Telegraph Company* v. *Los Angeles*, 227 U. S. 278. It is fallacious to contend that the officer is a representative of the state and the state is being sued. The Court below fell into this error. The suit is against the individual officer. This modern construction of the Eleventh Amendment which gives full scope to the guarantees later declared in the Fourteenth Amendment has become the established law of the land. Any other construction might well involve a question as to whether the Fourteenth Amendment

in any way curtailed the prohibition of the earlier Eleventh Amendment. No longer does the prohibition of the Eleventh Amendment extend to suits against an individual purporting to act for a state under an invalid statute or under a valid statute in a way not authorized by it. Such suits are not against the state, but against persons individually.

The instant suit is necessary to restrain infringement of the petitioner's constitutional rights by certain named individuals, citizens of California and Massachusetts, who are here attempting to extend their activities beyond the cloak of sovereignty that their respective states throw about their authorized acts. Such persons, possessing state power, and attempting to use that power in wrongful action prohibited by the Fourteenth Amendment, may be enjoined by a federal court. The applicable principle is well stated in *In re Ayers*, 123 U. S. 443, at 507, where the Court says:

> If, therefore, an individual, acting under the assumed authority of a State, as one of its officers, and under color of its laws, comes into conflict with the superior authority of a valid law of the United States, he is stripped of his representative character, and subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States.

No different application of the Eleventh Amendment is made where the state officers are acting under

a tax statute. If the statute is unconstitutional, nothing prevents an injunction against the individual purporting to act under it. *Ex parte Tyler*, 149 U. S. 164; *Poindexter* v. *Greenhow*, 114 U. S. 270. Where the statute is admittedly constitutional but the officers are enforcing it in a way that violates the taxpayer's constitutional rights, an injunction will be granted against such action which is unauthorized by the statute. In *Greene* v. *Louisville Railway Co.* 244 U. S. 499, the Kentucky franchise tax statute was valid, but the defendants constituting the Board of Valuation and Assessment of the state of Kentucky discriminated against the plaintiff railroad by assessing it on a basis of 75 per cent of actual values where property in general was assessed on a basis of 52 per cent. The Court considered the Eleventh Amendment, decided it had jurisdiction and enjoined the state officials.

In a similar earlier case tax collection was restrained where the tax statute was constitutional but the action of the collecting officers discriminatory and invalid. *Raymond* v. *Chicago Union Traction Co.*, 207 U. S. 20. In *Reagan* v. *Farmers Loan & Trust Co.*, 154 U. S. 362, at 390, the court stated:

> Neither will the constitutionality of the statute, if that be conceded, avail to oust the Federal court of jurisdiction. A valid law may be wrongfully administered by officers of the State, and so as to make such administration an illegal burden and exaction upon the individual. A tax law, as it leaves the legisla-

> tive hands, may not be obnoxious to any challenge, and yet the officers charged with the administration of that valid tax law may so act under it in the matter of assessment or collection as to work an illegal trespass upon the property rights of the individual. They may go beyond the powers thereby conferred, and when they do so the fact that they are assuming to act under a valid law will not oust the courts of jurisdiction to restrain their excessive and illegal acts.

In commenting upon the Interpleader Act, Judge Morton of the Court below stated in his dissenting opinion "It is characteristic of bills in the nature of interpleader under this statute, that the plaintiff concedes indebtedness to one or the other of the claimants, but denies indebtedness or obligation to each one separately." (R. 57, 58.) We have in the present case one group of tax officials, namely, those of California, and another tax official, of Massachusetts, each claiming that the domicile of the decedent was in his respective state and that the state inheritance tax based on such domicile should be paid to his state. The Court can neither assume nor determine that either set of officials is acting legally without a hearing on the facts as to the subject matter of the controversey, namely, the domicile of the decedent. A hearing on the merits is required. See *Mosher* v. *Phoenix*, 287 U. S. 29, 32; *City Bank Farmers Trust Co.* v. *Schnader*, 291 U. S. 24, 293 U. S. 112. It must necessarily follow from such an inquiry and determi-

nation that one set of officials is claiming illegally and if so they have no immunity as officials. Their claims are personal, rather than the claims of the state they say they represent. The situation is clearly analyzed by Chaffee in his article on the Federal Interpleader Act of 1936 in 45 Yale Law Journal at page 1173 as follows:

> The tax official of one state (but of which state is uncertain) is admittedly acting within his constitutional and statutory powers. It may be argued, consequently, that proceedings against this official (whichever he is) are really against his state and thus outside the jurisdiction of a United States court. On the other hand, the official of one state is proceeding in violation of the Fourteenth Amendment, and interpleader is the best way to find out which state official it is. Thus, as to each claim, a genuine constitutional doubt exists. This seems sufficient to bring the case within the principle of *Ex parte Young*. After all, the possibility that a defendant official's action is valid is present in every federal equity suit against an official of a state or of the United States. The court does not know until the case is decided whether or not he was acting lawfully. In many cases jurisdiction was taken to enjoin official action that was ultimately held constitutional. For instance, in *Ex parte Young* itself the freight rate at issue was eventually sustained. Suits in equity against state and federal officials have become the customary process for settling grave constitu-

> tional questions created by administrative orders, and in recent years the Supreme Court has rarely let the supposed principle of sovereign immunity interfere with the smooth operation of this process. Therefore, it is to be hoped that the Eleventh Amendment will not prevent federal interpleader to determine which of two state inheritance taxes is lawful. The need to decide the constitutional question in equity is much greater here than in the usual injunction suit against state officials, because federal interpleader is virtually the only practicable remedy. Neither state nor federal courts can offer any satisfactory alternative.

A Federal Court in equity has jurisdiction to enjoin unlawful tax proceedings, especially where the threatened enforcement of a state law contravenes the Federal Constitution and where it is essential to protect personal rights guaranteed by the Fourteenth Amendment to the Federal Constitution against injuries that cannot otherwise be remedied. The complaint alleges irreparable damage, an allegation which must be taken as admitted on consideration of the motion to dismiss. Prior to the 1936 Interpleader Amendment the Court had established these equitable principles in the case of *City Bank Farmers Trust Company* v. *Schnader*, 291 U. S. 24. See also *Terrace* v. *Thompson*, 263 U. S. 197 and *Greene* v. *Louisville Ry.*, 244 U. S. 499. Here both sets of tax officials assume to act for a principal but in the case of one or the other the acts are wrongful and the

agent cannot escape the consequences of his wrongful act.

Our position on this main issue presented by the petition is amply supported by *Poindexter* v. *Greenhow*, 114 U. S. 270. In that case a collector of taxes in Virginia refused a lawful tender for the payment of taxes and seized property of the taxpayer. The Court held that in so doing he ceased to be an officer of the law and became a private wrongdoer. The tender was in currency made valid by Congressional Act and in coupons which the state had by contract agreed to accept in tax payments, though it had changed its position and later refused to accept them. The Court, at pages 288 and 290, stated that the defendant, sued as a wrongdoer, sought

> to substitute the State in his place, or to justify by the authority of the State, or to defend on the ground that the State has adopted his act and exonerated him. ***** The state is a political corporate body, can act only through agents, and can command only by laws ***** The Constitution of the United States and its own contract, both irrepealable by any act on its part, are the law of Virginia ***** He stands then stripped of his official character; and confessing a personal violation of the plaintiff's rights for which he must personally answer, he is without defence. ***** That which, therefore, is unlawful because made so by the supreme law, the Constitution of the United States, is not the word or deed of the State, but is the mere wrong and trespass of those

> individual persons who falsely speak and act in its name.

In speaking of the Eleventh Amendment, the Court continued at page 297:

> The fancied inconvenience of an interference with the collection of its taxes by the government of Virginia, by suits against its tax collectors, vanishes at once upon the suggestion that such interference is not possible, except when that government seeks to enforce the collection of its taxes contrary to the law and contract of the State, and in violation of the Constitution of the United States. The immunity from suit by the State now invoked, vainly, to protect the individual wrongdoers, finds no warrant in the Eleventh Amendment to the Constitution and is, in fact, a protest against the enforcement of that other provision which forbids any State from passing laws impairing the obligation of contracts.

In the present proceeding the California tax officials' position in no way differs from that of the Virginia collector in the *Poindexter* case.

In respect to the Eleventh Amendment the Circuit Court of Appeals took several positions. It first disregarded entirely the distinction emphasized in *Ex parte Young*, 209 U. S. 123, between a state and officers of a state acting beyond their authority, and sought to limit its vision to the simple proposition that California and Massachusetts are the ultimate parties in interest in this litigation. Such a superficial analysis

of the case disregards all precedent. The District Court refused to take such a limited view of the matter when it stated:

> A short cut to the answer would be to hold that the two states were the adverse claimants and that consequently the jurisdictional requirement of the statute was not met since a state cannot be a citizen. I do not believe, however, that the matter can or ought to be dismissed in so summary a fashion (R. 30).

Quotations from opinions prohibiting suits against sovereign states are scarcely helpful. Their truth is apparent, but so also is their superficial relation to the real underlying issue in the instant case. In *Iowa Des Moines National Bank* v. *Bennett*, 284 U. S. 239 at 246, this Court distinguished such precedents by stating in a footnote: "Cases discussing the question of what constitutes a suit against the State within the meaning of the Eleventh Amendment ***** have no bearing upon the power of this Court to protect rights secured by the federal Constitution."

The complaint does not allege in so many words that the respondents acted arbitrarily and without substantial evidence to support their determination of domicile. The majority of the Court below is of opinion (R. 52) that had the complaint used this particular language the character of the suit would have been altered and the sovereign states not parties to it. It also erroneously assumes that each set of tax officials acted in conformity to law and upon ade-

quate evidence (R. 53). The complaint does allege that the action threatened by the individual respondents is upon inconsistent claims, is causing petitioner irreparable injury and depriving it of property without due process of law. (R. 5). Nicety in diction may be desirable, but we submit the Court below has demonstrated the narrowness of its construction of the Interpleader Act by hanging its decision on such grounds. Whatever language were used to characterize the action of the individual respondents, they would still hold state offices and the maintenance of the suit would depend upon the applicability of the doctrine of *Ex parte Young*, 209 U. S. 123, rather than on the presence or absence of the word "arbitrary" in the complaint.

The Court below also takes the novel position that no constitutional rights of the petitioner will be violated even though both California and Massachusetts inheritance taxes, based on inconsistent findings of domicile, are collected. From this premise it proceeds to the conclusion that the petitioner is entitled to no relief against the tax officials even if their individual capacity is recognized. This startling position that due process of law would not be denied by such multiple inheritance taxation, is contrary to all recent rulings of this Court. We submit that the District Court was correct in concluding that "It is, therefore, obvious that if the taxing officials of both of these states carry out their threat of imposing an inheritance tax upon the transfer of decedent's intangibles,

one or the other of the states will be violating the Fourteenth Amendment" (R. 29). This Court reached that exact conclusion in *City Bank Farmers Trust Co.* v. *Schnader*, 291 U. S. 24. It is noteworthy that this recent decision was not even mentioned in the opinion of the Court below. No thorough consideration can be given to the instant case without a careful analysis of this precedent. There a bill was brought by the New York executor for an injunction alleging irreparable injury to the estate by reason of the threat of the Pennsylvania tax authorities to collect an inheritance tax upon certain paintings temporarily in Pennsylvania (but alleged by the authorities to have a tax situs there) at the time of the decedent's death, and a decree dismissing the bill was reversed. The bill in the instant case is very similar to that in the *Schnader* case. In each the alleged violation of the Fourteenth Amendment is the threat by the officials of a state having personal property in its control to collect a tax which cannot legally be assessed upon such a non-resident estate.

If the opinion of the Circuit Court of Appeals were sound that multiple inheritance taxation based on inconsistent determinations of domicile does not deny due process, the entire basis for the jurisdiction taken in the *Schnader* case would vanish. If, on the other hand a denial of due process *was* threatened by the attempt of the Pennsylvania officials to determine that the paintings had a taxable situs in Pennsylvania, it must follow that a denial of due process

is threatened in the instant case by the assertion of the California officials that the decedent was domiciled in California. In such cases, where the constitutional questions are raised at the outset, the federal court must itself ultimately review the evidence and determine for itself the true domicile or situs. Thus when the *Schnader* case came before this Court the second time for decision of the case on the merits, the Tax Commissioner of New York filed a brief *amicus curiae* and in outlining the question presented for decision this Court stated that "appellant framed its complaint to call for a decision whether Pennsylvania or New York is entitled to the tax." *City Bank Farmers Trust Co.* v. *Schnader*, 293 U. S. 112, 117. The complaint in the instant case calls for similar treatment.

The Court below relied on the *Dorrance Estate* litigation as proof that no constitutional rights are violated by such multiple inheritance taxation as is threatened here. The various rulings in *Hill* v. *Martin*, 296 U. S. 393, and the earlier decisions in that Dorrance Estate litigation; do not suggest such a view by any of the courts concerned. The failure to prevent the violation of constitutional rights was due to the unfortunate pleadings and procedure chosen by the estate's representatives in presenting their case to the state courts so that the federal constitutional question was never considered. These state court suits in the Dorrance litigation were prior to the 1936 Amendment of the Interpleader Act. In the

instant case federal questions are squarely presented on the allegations of the bill. *First National Bank of Boston* v. *Maine*, 284 U. S. 312, and the principles of the prior cases which lead to that decision, require a holding by this court that the collection of an inheritance tax from the Hunt Estate by one state (based on domicile therein), for example California, if the final decision as to domicile is that it is in another state, for example Massachusetts, would be a denial of due process of law under the Fourteenth Amendment. The way to circumvent the Fourteenth Amendment as we understand the decision of the court below, is for each state court to decree domicile in its respective state. Such an opinion merely illuminates the already glaring need of one impartial forum to settle the issue of domicile. It may also lead to startling practical results. State inheritance taxation is increasing. Double domicile, so determined, may become multiple domicile. Already, a controversy involving quadruple domicile is pending before this court, *Texas* v. *Florida*, 300 U. S. 643, on the allegation by the state of Texas that if the four revenue seeking states collect their tax claims, the aggregate of the taxes will exceed the amount of the gross estate. The executor does not propose to try out the issue of domicile in several state courts and it should not be required to do so. Such trials might conceivably result in the absurdity of decrees by each state court that the decedent died domiciled in the other jurisdiction. Domicile can be in one state

only. If it is not in California, nothing the courts of that state can say will affect the true fact of domicile, or the estate's right to escape from California taxes assessed on a resident basis. Were the Court below correct in its view this Court would have found no denial of due process in *Farmers Loan & Trust Co.* v. *Minnesota*, 280 U. S. 204. In that case the aggrieved party had a hearing in the state court which held that there were such local characteristics of the property in question that its transfer could be taxed in the state of the forum. A finding by a California court that Hunt was domiciled there would have the same significance. It would be mere lip service to the principle that intangibles are taxable at the domicile, and in substance provide the Hunt Estate with no more due process of law than was accorded the taxpayers in the *Minnesota* case by the state court. In the instant case an opportunity is provided to give practical effect to the principle established by the *Minnesota* opinion where it was said at page 212:

> "Taxation is an intensely practical matter and laws in respect of it should be construed and applied with a view of avoiding, so far as possible, unjust and oppressive consequences. We have determined that in general intangibles may be properly taxed at the domicile of their owner and we can find no sufficient reason for saying that they are not entitled to enjoy an immunity against taxation at more than one place similar to that accorded to tangibles."

CONCLUSION

The decree below should be reversed and the Judgment of the District Court affirmed.

Respectfully submitted,

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APPENDIX

A.

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49 Stat. 1096

n Act to amend section 24 of the Judicial Code by conferring on district courts additional jurisdiction of bills of interpleader, and of bills in the nature of interpleader.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 24 of the Judicial Code, s amended, is amended by inserting at the end there- f the following:

"(26) Original jurisdiction of bills of interpleader, nd of bills in the nature of interpleader—Twenty- ixth.—(a) Of suits in equity begun by bills of inter- pleader or bills in the nature of bills of interpleader duly verified, filed by any person, firm, corporation, association, or society having in his or its custody or

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44 Stat. (Part 2) 46

CHAP. 273.—An Act Authorizing casualty companies, surety companies, insurance companies or associations or fraternal or beneficial societies to file bills of interpleader.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That the district courts of the United States shall have original jurisdiction to entertain and determine suits in equity begun by bills of interpleader duly verified, filed by any casualty company, surety company, insurance company or association or fraternal or beneficial society, and averring that one or more

ossession money or property of the value of $500 or
ore, or having issued a note, bond, certificate, policy
f insurance, or other instrument of the value or
mount of $500 or more, or providing for the delivery
f payment or the loan of money or property of such
mount or value, or being under any obligation written
r unwritten to the amount of $500 or more, if

"(i) Two or more adverse claimants, citizens of different States, are claiming to be entitled to such money or property, or to any one or more of the benefits arising by virtue of any note, bond, certificate, policy, or other instrument, or arising by virtue of any such obligations; and

persons who are bona fide claimants against such company, association, or society resides or reside within the territorial jurisdiction of said court; that such company, association, or society has in its custody or possession money or property of the value of $500 or more, or has issued a bond or a policy of insurance or certificate of membership providing for the payment of $500 or more to the obligee or obligees in such bond or as insurance, indemnity, or benefits to a beneficiary, beneficiaries, or the heirs, next of kin, legal representatives, or assignee of the person insured or member;

that two or more adverse claimants, citizens of different States, are claiming to be entitled to such money or property or the penalty of such bond, or to such insurance, indemnity, or benefits;

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"(ii) The complainant (a) has deposited such money or property or has paid the amount of or the loan or other value of such instrument or the amount due under such obligation into the registry of the court, there to abide the judgment of the court; or (b) has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance by the complainant with the future order or decree of the court with respect to the subject matter of the controversy.

Such a suit in equity may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical; but are adverse to and independent of one another.

"(b) Such a suit may be brought in the district

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that such company, association, or society has deposited such money or property or has paid the amount of such bond or policy into the registry of the court, there to abide the judgment of the court.

SEC. 2. In all such cases if the policy or certificate is drawn payable to the estate of the insured and has not been assigned in accordance with the terms of the policy or certificate the district court of the district of the residence of the personal representative of the

court of the district in which one or more of such claimants resides or reside.

insured shall have jurisdiction of such suit. In case the policy or certificate has been assigned during the life of the insured in accordance with the terms of the policy or certificate, the district court of the district of the residence of the assignee or of his personal representative shall have jurisdiction. In case the policy or certificate is drawn payable to a beneficiary or beneficiaries and there has been no such assignment as aforesaid the jurisdiction shall be in the district court of the district in which the beneficiary or beneficiaries or their personal representatives reside. In case there are claimants of such money or property, or in case there are beneficiaries under any such bond or policy resident in more districts than one, then jurisdiction shall be in the district court in any district in which a beneficiary or the personal representative of a claimant or a deceased claimant or beneficiary resides.

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"(c) Notwithstanding any provision of the Judicial Code to the contrary, said court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State court or in any United States court on account of such money or property or on such instrument or obligation until the further order of the court; which process and order of injunction shall be returnable at such time as the said court or a judge thereof shall determine and shall be addressed to and served by the United States marshals for the respective districts wherein said claimants reside or may be found.

"(d) Said court shall hear and determine the cause and shall discharge the complainant from

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Notwithstanding any provision of the Judicial Code to the contrary, said court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State court or in any other Federal court on account of such money or property or on such bond or on such policy or certificate of membership until the further order of the court; which process and order of injunction shall be returnable at such time as the said court or a judge thereof shall determine and shall be addressed to and served by the United States marshals for the respective districts wherein said claimants reside or may be found.

SEC. 3. Said court shall hear and determine the cause and shall discharge the complainant from further

further liability; and shall make the injunction permanent and enter all such other orders and decrees as may be necessary or convenient to carry out and enforce the same.

"(e) In any action at law in a United States District Court against any person, firm, corporation, association, or society, such defendant may set up by way of equitable defense, in accordance with section 274b of the Judicial Code (U.S.C., title 28, sec. 398), any matter which would entitle such person, firm, corporation, association, or society to file an original or ancillary bill of interpleader or bill in the nature of interpleader in the same court or in any other United States District Court against the plaintiff in such action at law and one or more other adverse claimants, under the provisions of paragraph (a) of

liability; and shall make the injunction permanent and enter all such other orders and decrees as may be suitable and proper, and issue all such customary writs as may be necessary or convenient to carry out and enforce the same.

this subsection or any other provision of the Judicial Code and the rules of court made pursuant thereto. The defendant may join as parties to such equitable defense any claimant or claimants who are not already parties to such action at law. The district court in which such equitable defense is interposed shall thereby possess the powers conferred upon district courts by paragraphs (c) and (d) of this subsection and by section 274b of the Judicial Code."

Sec. 2. The Act entitled "An Act authorizing casualty companies, surety companies, insurance companies or associations or fraternal or beneficial societies to file bills of interpleader," approved May 8, 1926 (U.S.C., Supp. III, title 28, sec. 41 (26)), is hereby repealed. Said repeal shall not affect any act done or any right, accruing or accrued in any suit or

SEC. 4. Public Act numbered 346, Sixty-fourth Congress, entitled "An Act authorizing insurance companies and fraternal beneficiary societies to file bills of interpleader," approved February 22, 1917, and Public Act numbered 465, Sixty-eighth Congress, entitled "An Act to amend an Act entitled 'An Act authorizing insurance companies or associations and

proceeding had or commenced under said Act hereby repealed, prior to the passage of this Act, but all such acts or rights, suits or proceedings shall continue and be valid and may be prosecuted and enforced in the same manner as if said Act had not been repealed hereby.

Approved, January 20, 1936.

fraternal beneficiary societies to file bills of interpleader,' approved February 22, 1917," approved February 25, 1925, be and the same are hereby repealed. Said repeal shall not affect any act done or any right, accuring or accrued in any suit or proceeding had or commenced under said Acts hereby repealed, prior to the passage of this Act, but all such acts or rights, suits or proceedings shall continue and be valid and may be prosecuted and enforced in the same manner as if said Acts had not been repealed hereby.

Approved, May 8, 1926.

B.

Chapter 65 of the General Laws of Massachusetts provides in part:

> SEC. 1. Taxation of Legacies and Successions; Rates of Tax; Exemptions. — All property within the jurisdiction of the commonwealth, corporeal or incorporeal, and any interest therein, belonging to inhabitants of the commonwealth, and all real estate or any interest therein and all tangible personal property within the commonwealth belonging to persons who are not inhabitants of the commonwealth except such an interest in such real estate as is represented by a mortgage or by a transferable certificate of participation or share of an association, partnership or trust, which shall pass by will, or by laws regulating intestate succession, or by deed, grant or gift, except in cases of a bona fide purchase for full consideration in money or money's worth, made in contemplation of the death of the grantor or donor or made or intended to take effect in possession or enjoyment after his death, and any beneficial interest therein which shall arise or accrue by survivorship in any form of joint ownership in which the decedent joint owner contributed during his life any part of the property held in such joint ownership or of the purchase price thereof, to any person, absolutely or in trust, except to or for the use of charitable, educational or religious societies or institutions, the property of which is by the laws of the commonwealth exempt

from taxation, or for or upon trust for any charitable purposes to be carried out within the commonwealth, or to or for the use of the commonwealth or any town therein for public purposes, shall be subject to a tax at the percentage rates fixed by the following table:*****

SEC. 6. Persons Liable for Taxes. — Administrators, executors and trustees, grantees or donees under conveyances or gifts made during the life of the grantor or donor, persons to whom beneficial interests shall accrue by survivorship and beneficiaries receiving additional property as provided in section twenty-seven, shall be liable for the taxes imposed by this chapter, with interest, until the same have been paid.

SEC. 9. Lien for Tax; Property Exempt; Discharge. — Property of which a decedent dies seized or possessed, subject to taxes as aforesaid, in whatever form of investment it may happen to be, and all property acquired in substitution therefor, shall be charged with a lien for all taxes and interest thereon which are or may become due on such property; but said lien shall not attach to any personal property after the same has been sold or disposed of for value by the executors, administrators or trustees, or to real estate after it has been conveyed by the executors, administrators or trustees under license or decree of the probate court, or to real estate which, during the life of the grantor, is conveyed by recorded or registered deed and transferred in possession and enjoyment by him to the grantee, in con-

templation of death. The lien charged by this chapter upon any real estate or separate parcel thereof may be discharged by the payment of all taxes due and to become due upon said real estate or separate parcel, or by an order or decree of the probate court discharging said lien and securing the payment to the commonwealth of the tax due or to become due by bond or deposit as hereinafter provided, or by transferring such lien to other real estate owned by the owner or owners of said real estate or separate parcel thereof.

C.

The Inheritance Tax Act of California, in force prior to the Amendment of June 24, 1935, provides in part as follows:

SEC. 1. (1) This act shall be known as the "Inheritance tax act."

(2) The words "estate" and "property" as used in this act shall be taken to mean the real and personal property or interest therein of the testator, intestate, grantor, bargainor, vendor, or donor passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees, vendees, or successors, and shall include all personal property within or without the state or subject to the jurisdiction thereof; (provisions as to community property omitted)

(3) The word "transfer" as used in this act shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift, or appointment in the manner herein described.

(4) The word "decedent" as used in this act shall include the testator, intestate, grantor, bargainor, vendor, or donor.

(5) The words "county treasurer" and "inheritance tax appraiser," as used in this act, shall be taken to mean the treasurer or the inheritance tax appraiser of the county of the superior court having jurisdiction as provided in section fifteen of this act.

SEC. 2. A tax shall be and is hereby imposed upon the transfer of any property, real, personal or mixed, or of any interest therein or income therefrom in trust or otherwise, to persons, institutions or corporations, not hereinafter exempted, to be paid to the treasurer of the proper county, as hereinafter directed, for the use of the state, said taxes to be upon the market value of such property at the rates hereinafter prescribed and only upon the excess over the exemptions hereinafter granted, in the following cases:

(1) When the transfer is by will or by the intestate or homestead laws of this state, from any person dying seized or possessed of the property while a resident of the state, or by any order of court setting apart property and/or making and granting extra or family allowances pursuant to article one, chapter five, title eleven, part three of the Code of Civil Procedure.

SEC. 3. Such taxes shall be and remain a lien upon the property passed or transferred until paid; *provided, however,* that where property is sold under and in accordance with the provisions of chapter seven, title eleven, part three of the Code of Civil Procedure the lien herein provided for shall be released from the property so sold and shall attach to the proceeds of such sale, and the person to whom the property passes or is transferred, except as herein in this section provided, and all administrators, executors, and trustees of every estate so transferred or passed, shall be liable

for any and all such taxes until the same shall have been paid as hereinafter directed. The provisions of the Code of Civil Procedure relative to the limitation of time of enforcing a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine, or enforce the collection of any tax or penalty prescribed by this act, and this section shall be construed as having been in effect as of date of the original enactment of the inheritance tax law; *provided*, that unless sued for within five years after they are due and legally demandable, such taxes, or any taxes accruing under any act herein repealed, shall cease to be a lien as against any bona fide purchaser of said property; *and provided*, that no such lien shall cease within two years from the date of the passage of this act.

SEC. 9. (1) Any administrator, executor, or trustee having in charge or trust any legacy or property for distribution, subject to the said tax, shall deduct the tax therefrom, or if the legacy or property be not money he shall collect the tax thereon, upon the market value thereof, from the legatee or person entitled to such property, and he shall not deliver, or be compelled to deliver, any specific legacy or property subject to tax to any person until he shall have collected the tax thereon; and whenever any such legacy shall be charged upon or payable out of real estate, the executor, administrator, or trustee shall collect said tax from the distributee thereof, and the same shall

remain a charge on such real estate until paid; if, however, such legacy be given in money to any person for a limited period, the executor, administrator, or trustee shall retain the tax upon the whole amount; but if it be not in money he shall make application to the superior court to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require.

SEC. 14. The state controller shall appoint, and may at his pleasure remove, one or more persons in each county of the state to act as inheritance tax appraisers therein. *****

SEC. 16. (1) When any superior court, having jurisdiction in probate of the estate of any decedent, or a judge of such court, shall, in accordance with section 1444 of the Code of Civil Procedure, appoint the appraiser or appraisers in said section provided for, said superior court or judge thereof shall also at the same time designate and appoint an inheritance tax appraiser (unless such designation and appointment be previously made) to ascertain and report to said superior court the amount of inheritance tax due upon any property passing in said probate proceeding, or a lien thereon, or upon any other property transferred within the meaning of subdivision (3) of section 2 of this act, or under any other provision of this act, to any person, institution or corporation taking property under and by virtue of said probate proceedings, together with such other or additional information as

shall assist said court in the determination of said tax. Thereupon said inheritance tax appraiser shall have all the powers of a referee of said superior court, and shall have jurisdiction to require the attendance before him of the executor, or administrator of said estate, or any person interested therein, or any other person whom he may have reason to believe possesses knowledge of the estate of said decedent, or knowledge of any property, transferred by said decedent within the meaning of this act, or knowledge of any facts that will aid said appraiser or the court in the determination of said tax. For the purpose of compelling the attendance of such person or persons before him, and for the purpose of appraising any property or interest subject to, or liable for any inheritance tax hereunder, and for the purpose of determining the amount of tax due thereon, the said inheritance tax appraiser is hereby authorized to issue subpoenas compelling the attendance of witnesses before him. Any person or persons who shall be served with a subpoena, issued by said inheritance tax appraiser, to appear, and testify or to produce books and papers, and who shall refuse and neglect to appear and testify or to produce books and papers relevant to such appraisement, as commanded in such subpoena, shall be guilty of a contempt of court. And he may examine and take the evidence of such witnesses or of such executor or administrator, or other person under oath concerning such property and the value thereof, and concerning

the property or the estate of such decedent subject to probate, and concerning any transfer made by such decedent within the meaning of this act. Upon the completion of his inheritance tax appraisement in any probate proceeding, the inheritance tax appraiser shall make a report in writing to the superior court of the clear market value of the several interests in the estate of the decedent, and shall report the amount of inheritance, or transfer tax chargeable against, or a lien upon such interests, acquired by virtue of said probate proceedings or by any transfer within the meaning of this act, to any person, institution or corporation acquiring any property by virtue of said probate proceedings together with such other facts as may advise the court in regard thereto, or which the court may require, and may return to said superior court such depositions as he may have had reduced to writing, exhibits, or other testimony or information taken before him, or submitted to him.

(2) Upon the filing of said report said appraiser shall mail a copy thereof to the state controller and the clerk of said superior court shall on said day or the next succeeding judicial day give notice of such filing to all persons interested in such proceedings by causing notice to be posted *at the court house in the county where the court is held*, and in addition thereto shall mail to the state controller and to all persons chargeable with any tax in said report who have appeared in such

proceeding, a copy of said notice. At any time after the expiration of ten days thereafter, if no objection to said report be filed, the said superior court or a judge thereof, may, without further notice, give and make its order confirming said report and fixing the tax in accordance therewith. At any time prior to the making of said order, any person interested in said proceeding (including the state controller) may file objections in writing to said report. Thereupon the clerk of the said superior court shall fix a time, not less than ten days thereafter, for the hearing thereof, and shall give notice of the said hearing by posting a notice thereof at the court house in the county where the court is held and by forthwith mailing a copy of such objection and of such notice to the state controller, county treasurer and inheritance tax appraiser. Upon the hearing of said objections, said court may make such order as to it may seem meet and proper in the premises; *provided*, that for the purpose of said hearing the report of the inheritance tax appraiser shall be presumed to be correct and it shall be the duty of objector or objectors to proceed in support of said objection or objections.

SEC. 21. The state controller, whenever he shall be cited as a party in any proceeding or action to determine any tax under this act provided, or whenever he shall deem it necessary for the better enforcement of this act to make any special employment to secure evidence of evasion of said tax, or to commence

or appear in any proceeding or action to determine any tax hereunder, may, by and with the consent and approval of the attorney general, make such special employment or designate and employ counsel or attorney in or out of this state to represent him on behalf of the state, and, by and with such consent of the attorney general, he is hereby authorized to incur the necessary expense for such employment and any reasonable and necessary expense incident thereto. And the county treasurer is hereby authorized and directed to pay out of any funds which may be in his hands on account of this tax, on presentation of a sworn itemized account and on certificate of the state controller and attorney general, all expenses incurred as in this section above provided, but no expense for such special employment or legal services, up to and including the entry of the order of the court fixing the tax and the same becoming final, shall exceed ten per centum of the tax and penalties collected: *provided*, that all reasonable and necessary expenses incurred, in any legal action or proceeding in any court of this state or on any appeal therefrom, other than attorney's fees, including expenses of serving processes and printing and preparing of necessary legal papers, may be allowed and paid in the manner above provided, even though no tax be recovered in such action or proceeding, and the limitations herein made shall not apply thereto.

D.

Chapters 296 and 333 of the California Laws of 1937 amended the Inheritance Tax Act so that it now contains the following:

"SEC. 3. All taxes imposed by this act or by any inheritance tax act of the State of California together with the interest thereon, until paid in full, shall be and remain a lien upon the interest of the decedent in the property which passes or is transferred, and the person to whom such interest in the property passes or is transferred, except as herein in this section provided, and all administrators, executors, and trustees of every estate so transferred or passed shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed; provided, that unless sued for within five years after they are due and legally demandable, such taxes shall cease to be a lien as against any bona fide purchaser, mortgagee, lessee, or beneficiary under a deed of trust."

"SEC. 7. (5) Notwithstanding any provisions hereof whereby final determination of taxability of the transfer of property or interests therein or income therefrom, is or may be deferred until the happening of certain contingencies or conditions, the State Controller may compromise, adjust and settle with the administrator, executor or trustee having charge of the estate or property in question, the taxability of the transfer of such property and of each and every interest therein, includ-

ing the income therefrom, whether such interests be absolute or qualified, perpetual or limited, present or future, vested or contingent or otherwise.

The inheritance tax appraiser, determining the inheritance tax payable, shall prepare a report in accordance with such settlement and if and when said report is confirmed by an order of the superior court having jurisdiction said order shall be a final determination of the matters covered thereby and the payment of said tax as fixed by said order shall be a complete discharge to such administrator, executor, or trustee with respect to such taxes."

"SEC. 7. (9) In all estates where a claim is made that the decedent was not domiciled in California at the time of his death the State Controller may, in his discretion, compromise the inheritance taxes payable in said estates, subject to the approval of the court.

The procedure shall conform to that set out in subdivision (5) of this section."